

THE *Dan Smoot Report*



DAN SMOOT

Vol. 14, No. 34 (Broadcast 678) August 19, 1968 Dallas, Texas

WHAT TO DO ABOUT THE SUPREME COURT

Senators now opposing President Johnson's nomination of Abe Fortas as Chief Justice of the Supreme Court are expressing alarm about Supreme Court decisions which Fortas has supported since he became Associate Justice in 1965. ⁽¹⁾ They should have realized in 1965 what kind of judge Fortas would be.

Senator Carl Curtis' warning that Fortas was soft on the question of law and order; Senator Strom Thurmond's warning that Fortas does not have respect for the rule of law; Fortas' past association with notorious communist traitors; his lifelong dedication to socialism (called "liberalism"); his reputation as a legal fixer for peddlers of pornography — all of this was known to the Senators who confirmed Fortas' appointment in 1965.

Fortas' record on the court has been consistent with his background.

Fortas cast a key vote in the 5-4 Supreme Court decision of January 23, 1967, which invalidated the Feinberg law and 2 other New York laws designed to keep communists and other subversives off the pay-rolls of public schools and colleges. The 4 justices who dissented (Tom Clark, John Harlan, Potter Stuart, Byron White) said the court majority had given the death blow to New York's efforts to protect its educational system from subversion, and that it had "swept away one of our most precious rights, namely, the right of self-preservation."⁽²⁾

The Supreme Court held the New York Feinberg law constitutional in 1952. In declaring it unconstitutional in the January 23, 1967, decision, the court majority said the 1952 decision no longer applies because attitudes have changed. ⁽²⁾ This capricious reason for reversing a prior Supreme Court decision, in order to overturn a state law which a majority of present justices do not like, recalls the warning made many years ago by Chief Justice Edward D. White (Associate Justice of the Supreme Court, 1891-94; Chief Justice, 1910-1921):

"Teach the lesson that settled principles may be overthrown at any time, and confusion and turmoil must ultimately prevail"

THE DAN SMOOT REPORT is published weekly by The Dan Smoot Report, Inc., Box 9538, Dallas Texas 75214 (office at 6441 Gaston Ave.). Subscriptions: \$18.00 for 2 years; \$10.00, 1 year; \$6.00, 6 months. Dan Smoot was born in Missouri, reared in Texas. With BA and MA degrees from SMU (1938 and 1940), he joined the Harvard faculty (1941) as a Teaching Fellow, doing graduate work in American civilization. From 1942 to 1951, he was an FBI agent; from 1951 to 1955, a commentator on national radio and television. In 1955, he started his present independent, free-enterprise business: publishing this REPORT and abbreviating it each week for radio and TV broadcasts available for commercial sponsorship by business firms.

Copyright by Dan Smoot, 1968. Second Class mail privilege authorized at Dallas, Texas.

"Break down this belief in judicial continuity, and let it be felt that on great constitutional questions this court is to depart from the settled conclusions of its predecessors, and to determine them all according to the mere opinion of those who temporarily fill its bench, and our Constitution will, in my judgment, be bereft of value, and become a most dangerous instrument to the rights and liberties of the people."⁽³⁾

Abe Fortas was with the 6-2 Supreme Court majority which decided *U.S. vs. Eugene Robel* on December 11, 1967, invalidating a provision of the Subversive Activities Control Act of 1950 which made it a crime for a member of the Communist Party to work in a defense plant.⁽⁴⁾

Fortas voted with the majority in Supreme Court decisions during May and June, 1967, reversing 23 state and federal convictions for violating laws on obscenity. During the term which ended in June, 1968, Fortas participated with the court majority in decisions which reversed 26 lower-court obscenity convictions. These decisions have encouraged the smut industry to release upon the American public the biggest deluge of hard core pornography ever to be inflicted on any nation — at a time when there is already a pronounced breakdown in public morality and a distinct increase in sexual degeneracy throughout the country.⁽⁵⁾

In *Powell vs. Texas*, June 17, 1968, the Supreme Court, in a 5-4 decision, *upheld* a lower court conviction of defendant Powell on a charge of being drunk in a public place. Abe Fortas *dissented* from the majority decision in this case, saying that defendant Powell is a "chronic alcoholic who . . . cannot resist the constant excessive consumption of alcohol and does not appear in public by his own volition but under a compulsion which is part of his condition." Fortas concluded that Powell should not have been found guilty of being drunk in a public place, because "criminal penalties may not be inflicted upon a person for being in a condition he is powerless to change."⁽⁶⁾

John C. Bell, Jr., Chief Justice of the Supreme Court of Pennsylvania, says:

"The land of law and order . . . has become a land of unrest, lawlessness, violence and disorder — a land of turmoil, of riotings, lootings, shootings, confusion and Babel . . .

"Respect for law and order — indeed, respect for any public or private authority — is rapidly vanishing. Why? . . .

"Let's face it — a dozen recent, revolutionary decisions by a majority of the Supreme Court of the United States in favor of murderers, robbers, rapists, and other dangerous criminals . . . and the molly coddling of lawbreakers and dangerous criminals by many judges . . . are literally jeopardizing the . . . welfare of our country . . .

"The recent decisions of a majority of the Supreme Court of the United States, which shackle the police and the courts and make it terrifically difficult . . . to protect society from crime and criminals, are . . . among the principal reasons for the turmoil and the near-revolutionary conditions which prevail in our country, and especially in Washington."⁽⁷⁾

Since he became Associate Justice, Abe Fortas has supported the Supreme Court's "revolutionary decisions" that are "jeopardizing the . . . welfare of our country."

The controversy about Earl Warren's retirement and about Johnson's consequent court appointments has focused attention on a system that has been so corrupted that it needs to be reformed by constitutional amendment.

Actually, Earl Warren has not resigned. He has put himself in the position of choosing to resign if he approves the man selected to succeed him, of refusing to resign if he disapproves.

Suppose the Senate refuses to confirm the appointment of Abe Fortas this year; and suppose the next President appoints, as Chief Justice, Dr. Clarence Manion (former Dean of the Notre Dame Law School, notable constitutional authority, presently director of the Manion Forum and an official of the John Birch Society). Does anyone

believe that Earl Warren would voluntarily resign and permit himself to be succeeded by an official of the John Birch Society?

Obviously, Lyndon Johnson and Earl Warren intend to cement the socialist-liberal leadership into our Supreme Court for the next 20 or 30 years, regardless of what the people want.

The Founding Fathers prescribed life tenure for judges to remove them from the turmoil and temptations of politics, so that the courts would be impartial and judicial rather than political.

But a Supreme Court justice, like Abe Fortas, who is also an aide and political adviser to a President, cannot possibly become non-political, impartial, and judicial when he goes on the bench.

A story in *The New York Times Magazine* of June 4, 1967, said that Justice Fortas is "drawn into non-judicial matters by friends who want government jobs and know he still carries weight at the White House." The article mentioned Fortas' role in getting a federal judgeship for one man, his acting as advisor to the President during a controversy between the White House and the steel industry over increases in the price of steel, his help to the President in matters involving labor disputes.

Such a political relationship between a Supreme Court justice and a President vitiates the original reasons for placing the justices beyond the reach of political controls.

Fortas has said the Constitution forbids him from discussing his court work with a committee of Congress, but there is no such constitutional *provision*. Apparently, he alludes to the *principle* that the 3 branches of government should be separate; but the principle does not prevent him from discussing anything he pleases with the executive branch.

This attitude is typical of all present Supreme Court justices. They interpret the Constitution to suit themselves, making decisions on the basis of personal tastes, political predilections, sociological hunches, and private prejudices — often defying

the obvious intent of laws and the Constitution. Hence, the justices are deeply involved in the swirling currents of politics. There being no way to keep the Supreme Court from being political, the court should be held accountable for its political activities.

How? What can we do?

We can elect a President who will appoint someone besides socialists to the Supreme Court. It is obvious that we will get no improvement in the quality of presidential appointments if Richard Nixon or Hubert Humphrey (or any other leading Democrat contender) is elected. George Wallace, on the other hand, has promised to withdraw the nominations of Abe Fortas and Homer Thornberry and to appoint men of different orientation.⁽⁸⁾

But the election of a President who promises to make proper nominations is not enough.

U. S. Representative John R. Rarick has organized the Supreme Court Amendment League (SCALE) for the sole purpose of finding a means "to check the unbridled, anti-constitutional activities of the Supreme Court."⁽⁹⁾

I hope Mr. Rarick's SCALE will sponsor a constitutional amendment limiting the term of each Supreme Court justice to 8 years, but leaving every ex-justice eligible (unless otherwise disqualified) for reappointment to an 8-year term by a President who had not appointed him before. Both Houses of Congress should be required to confirm a nominee to the Supreme Court, and to reconfirm him every four years. If not reconfirmed, a justice would be removed automatically. Congress should also have power to remove any Supreme Court justice at any time, by legislation — the legislation to be passed as other bills are: by majority vote in both Houses if the President signs it, by a two-thirds vote in both Houses to override a presidential veto.

This is the only constitutional amendment needed, with regard to the Supreme Court. Various members of Congress (and others) have proposed a great many amendments to nullify harmful and illegal decisions the court has already made —

such as those outlawing prayer and Bible reading in public schools, those ordering reapportionment of state and local legislative bodies according to the whim of the court, those invalidating laws intended to protect society against communist subversion, and so on.

Such amendments are undesirable and unnecessary: *undesirable*, because they imply that the illegal court decisions were legal; *unnecessary* because Congress has full constitutional authority to limit, or abolish, the appellate jurisdiction of the federal courts.

It is both destructive of freedom and a travesty on republican government to permit a small, non-elected body of men, enjoying life tenure in their jobs, quite beyond the reach of the people, to alter or overturn laws enacted by elected legislative bodies. The Constitution does not grant the Supreme Court authority to invalidate laws of Congress or of the state legislatures. The court has usurped such authority. Hence, Congress should enact a law denying all federal courts appellate jurisdiction in all cases challenging the validity of state and local laws.

We need a President who will put country above politics and personal friendship in making Supreme Court appointments. We need a Congress which (1) will strip the federal courts of the appellate jurisdiction they have used in the past to nullify acts of Congress and state legislatures; and which (2) will propose a constitutional amendment limiting the terms of Supreme Court justices.

When these needs are filled, the Supreme Court will be compelled to function as a court, prohibited from operating as a revolutionary cabal to subvert constitutional government in the United States.

SUGGESTION: Distribute this *Report* and last week's issue, "Cronyism and the Court," together

— as widely as possible — to defeat the confirmation of Abe Fortas and Homer Thornberry, and to support effective measures for curbing the lawless, rampaging Supreme Court.

STUDENT SUBSCRIPTIONS

As a new school year begins, take advantage of our very special student subscription rate — 9 months for \$6.00 prepaid. If you do not know any students, contribute to our student gift fund (not tax exempt), so that we can fill requests from students who wish to receive the *Report* but do not have funds to pay for it.

SUBSCRIBE TO THE DAN SMOOT REPORT:

6 mo. — \$6.00; 1 yr. — \$10.00; 2 yr. — \$18.00

Please notify us of any change of address *before* you move. With increased postal rates, we no longer can afford to remail issues returned by the Post Office.

FOOTNOTES

- (1) Senate speech by Senator Jack Miller, July 26, 1968
- (2) *New York Times*, Jan. 24, 1967, pp. 1, 26
- (3) *Congressional Record* (daily), July 18, 1968, p. S 8855
- (4) *New York Times*, Dec. 12, 1967, pp. 1, 32
- (5) Extension of Remarks of Representative John R. Rarick, *Congressional Record* (daily), July 22, 1968, p. E 6759 ff.
- (6) *Congressional Quarterly Weekly Report*, June 28, 1968, p. 1599
- (7) *Congressional Record* (daily), July 17, 1968, pp. S 8749, S 8750
- (8) *Dallas Morning News*, Aug. 7, 1968, p. 6 A
- (9) Representative Rarick welcomes and needs new members in SCALE. Address: 7404 Ben Franklin, Washington, D. C. 20044

REPRINTS OF THIS ISSUE

(for bulk mailing to one address):

1 copy	\$.25	100 copies	\$ 6.50
10 copies	1.00	200 copies	12.00
25 copies	2.00	500 copies	28.00
50 copies	3.50	1000 copies	50.00

Texans Add 3% for Sales Tax

THE DAN SMOOT REPORT TAYLOR 1-2303
BOX 9538 DALLAS, TEXAS 75214